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24 *Bard Peripheral Vascular, Inc.*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

**IN RE: Bard IVC Filters Products Liability
Litigation,**

No. 2:15-MD-02641-DGC

This Document Relates to:

Debra Tinlin, et al. v. C. R. Bard, Inc., et al.
CV-16-00263-PHX-DGC

**DEFENDANTS' RESPONSE TO
PLAINTIFFS' MOTION IN
LIMINE NO. 6: SOCIAL
SECURITY DISABILITY
BENEFITS WHICH ARE
BARRED BY WISCONSIN'S
COLLATERAL SOURCE RULE**

(Assigned to the Honorable David G. Campbell)

(Oral Argument Requested)

1 The plaintiffs argue that testimony and evidence about Mrs. Tinlin's "social
 2 security disability benefits or applications to obtain such benefits" are barred by
 3 Wisconsin's collateral source rule. But Bard does not intend to offer evidence of Mrs.
 4 Tinlin's disability to show that she received benefits from a collateral source as
 5 compensation for any part of her alleged losses, or to offset/reduce any potential damages
 6 award. Rather, Mrs. Tinlin has various physical limitations that have nothing to do with
 7 the Recovery Filter, and the jury should be able to hear evidence that puts these
 8 limitations into context to prevent the jury from assuming or inferring that her disability is
 9 related to the filter. Thus, the plaintiffs' motion should be denied.

10 The Wisconsin Supreme Court has summarized the collateral source rule as
 11 "help[ing] claimants recover 'reasonable value of the medical services rendered, without
 12 limitation to the amounts paid.'" *Leitinger v. DBart, Inc.*, 736 N.W.2d 1, 8 (Wis. 2007)
 13 (quoting *Lagerstrom v. Myrtle Werth Hosp.*, 700 N.W.2d 201, 215-16 (Wis. 2005)).
 14 Wisconsin's collateral source rule "denies a tortfeasor credit for payments or benefits
 15 conferred upon the plaintiff by any person other than the tortfeasor." *Id.* As such, an
 16 award of damages cannot be limited or reduced by a collateral source payment. *Id.*
 17 Likewise, the collateral source rule precludes introduction of evidence about benefits a
 18 plaintiff has obtained from a collateral source. *Id.*

19 None of the evidence that Bard seeks to introduce, or that the plaintiffs identified in
 20 their Motion, concerns payment or benefits that Mrs. Tinlin received because of her
 21 disability, however. Rather, when Mrs. Tinlin suffers from a neurological disorder, has
 22 undergone numerous open surgeries, alleges permanent debilitating pain and suffering
 23 because of those surgeries, and has apparent physical limitations, including being
 24 wheelchair bound, the jury should be able to hear evidence that most, if not all, of these
 25 physical limitations are due to reasons other than the Recovery Filter. This evidence
 26 includes the fact that Mrs. Tinlin was adjudicated as disabled before she received a
 27 Recovery Filter. This evidence includes the fact that her neurologist thought that
 28 Mrs. Tinlin's deep venous thrombosis with pulmonary emboli (the very reason that

1 Mrs. Tinlin needed an IVC filter) combined with her neurological condition were such
 2 serious medical conditions that she believed Mrs. Tinlin to be permanently disabled and
 3 unable to work as a result. And this evidence includes the fact that before any alleged
 4 fracture of the Recovery Filter, Mrs. Tinlin's neurologist thought that Mrs. Tinlin was
 5 permanently disabled, physically unable to work, and physically never would be able to
 6 work again. Bard believes that this type of evidence is not only relevant, but in fact
 7 essential to putting Mrs. Tinlin's current physician condition and any damages into
 8 context, and to prevent the jury from assuming or inferring that her disability is related to
 9 the filter.

10 For these reasons, Bard respectfully requests that the Court deny the Motion.

11 RESPECTFULLY SUBMITTED this 12th day of April, 2019.

12 s/ Richard B. North, Jr.

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